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January 24, 2006

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: August 4, 2005

Case Number: TSO-0279

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter "the individual") to hold an access authorization.<sup>1</sup> The regulations governing the individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the individual should be granted access authorization. As discussed below, I find that access authorization should be granted in this case.

I. BACKGROUND

This administrative review proceeding began with the issuance of a notification letter by a Department of Energy (DOE) Office, informing the individual that information in the possession of the DOE created substantial doubt pertaining to his eligibility for an access authorization in connection with his work. In accordance with 10 C.F.R. § 710.21, the notification letter included a statement of the derogatory information causing the security concern.

The security concern cited in the letter involves the individual's excessive use of alcohol. According to the letter, a DOE consultant psychiatrist diagnosed the individual as an abuser of

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1/ An access authorization (or security clearance) is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

alcohol. In his written report to the DOE, the DOE consultant psychiatrist indicated that in order to demonstrate adequate evidence of rehabilitation or reformation from this condition the individual would need outpatient treatment of "moderate intensity,. . . such as Alcoholics Anonymous a few times per week, perhaps with individual counseling as well, and should include maintenance of sobriety (abstinence from alcohol). Duration of such treatment should be for at least a year to provide adequate evidence of rehabilitation and reformation." The notification letter also pointed out eight alcohol-related incidents involving the individual and domestic violence or driving while intoxicated that took place during the period 1972 through 1997. According to the notification letter, this constitutes derogatory information under 10 C.F.R. § 710.8(j)(hereinafter Criterion J).<sup>2</sup>

The notification letter informed the individual that he was entitled to a hearing before a Hearing Officer, in order to respond to the information contained in that letter. The individual requested a hearing, and that request was forwarded by the DOE Office to the Office of Hearings and Appeals (OHA). I was appointed the Hearing Officer in this matter. In accordance with 10 C.F.R. § 710.25(e) and (g), the hearing was convened.

At the hearing, the individual testified on his own behalf, and presented the testimony of an AA companion, a friend, his brother-in-law, his wife and his son. The DOE counsel presented the testimony of the DOE consultant psychiatrist.

## II. Hearing Testimony

### A. The Individual

The individual readily admits that he is an alcoholic. He testified that he stopped drinking on new year's eve of 2004-2005, about eleven months prior to the hearing. He began attending AA daily on July 8, 2005. He testified that he is committed to working on the AA 12-step program and has had an AA sponsor for three months. He intends to continue participating in AA. He also attended an intensive outpatient program (IOP) beginning in September 2005.

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<sup>2/</sup> Criterion J security concerns relate to an individual's use of alcohol habitually to excess, or to an individual's having been diagnosed by a psychiatrist or licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.

This eight-week program involved three two-hour counseling sessions per week plus one hour of home work. He has signed up to attend a relapse prevention program. He believes that his triggers for alcohol use are stress, arguments and anger. Through the IOP counseling and AA, he has learned to manage these triggers. He believes that his new coping skills will help him maintain abstinence. He has a strong support system, which includes his AA sponsor. He believes that this will help him cope in the event that he perceives a relapse trigger that he is unable to control on his own. One key to his strong desire to maintain an alcohol-free lifestyle is his concern for his health. During the period when he was using alcohol, he had elevated liver enzymes, indicating some liver impairment. In this regard, the individual noted that his own father had died at the age of 51 of cirrhosis of the liver brought on by excessive use of alcohol. Another motivating factor in his desire to remain alcohol free is his improved relationship with his wife. Tr. at 83-112.

#### B. AA Companion

The individual's AA companion testified that the individual has been attending AA meetings for approximately six months, and she sees the individual at AA meetings almost daily. She indicated that the individual attends several different types of meetings, is sincere and committed to the program and participates extensively. She was convinced that he has remained sober during the time that she has known him. One reason that she gave for this belief was that, in her six years of experience with AA, participants who resume using alcohol cease coming to meetings. Tr. at 18-25.

#### C. Individual's Wife

The wife testified that over the past several years, there has been a gradual decline in the individual's use of alcohol, with a more dramatic decline since April 2004. The wife stated that the individual has not used alcohol since new year's eve of 2004-2005, and that this sobriety has been part of an overall commitment to a healthier life style. She indicated that as a result of this change, their relationship has been more stable and positive. She stated that she would be aware if he returned to alcohol use because they are together most of the time when the individual is not at work. She confirmed that he regularly attends AA meetings and that he enjoys participating in the organization. She further confirmed that beginning in September 2005, the individual attended an eight-week intensive outpatient program for alcohol use. She testified

that if the individual ever indicated to her that he was tempted to use alcohol, she would tell him to call his sponsor immediately.

D. Individual's Son

The son testified that his father's last drink of alcohol came on new year's eve of 2004-2005. The son stated that since that time, he has seen his father at a number of events at which alcohol was served, especially at family gatherings for birthday parties and holidays. He also visits his father about once a week. He confirmed that his father has not used alcohol in 2005. He also stated that his father had been reducing his consumption of alcohol for a number of years and has been trying to set an example for alcohol-free family gatherings. He believed that an important reason for his father's abstinence from alcohol was due to health concerns, citing the fact that the individual's own father had passed away at an early age.

E. Friend

This witness stated that he has known the individual for about 20 years. He indicated that he was recently elected to a political office in the city where he and the individual reside, and that the individual participated in his political campaign. The witness stated that during his campaign and at his victory party, which took place during 2005, there were receptions at which alcohol was served. He stated that he did not see the individual use alcohol during those times. Tr. at 27-28

F. Brother-in-Law

The individual's brother-in-law stated that he has known the individual since 1975. He sees the individual about once a month, and confirmed that he did not see the individual use alcohol in the year 2005. Tr. at 35-41.

G. The DOE Consultant Psychiatrist

After listening to the testimony of all the above witnesses, the DOE consultant psychiatrist was convinced that the individual had maintained abstinence for the period since January 1, 2005, and had also participated in AA and the IOP program. He was persuaded that the individual is very serious about both his commitment to abstinence and the AA program. The consultant psychiatrist noted in particular the individual's concern about his health and the fact that the individual's own father died of cirrhosis of the liver as

important motivations for the individual to abstain from alcohol. Overall, the consultant psychiatrist believed that the individual had a low probability of relapse. The consultant psychiatrist testified that even though he had originally recommended that the individual demonstrate 12 months of abstinence and treatment, he believed that the individual's 11 months of abstinence at the time of the hearing, along with the AA and IOP participation, were sufficient to demonstrate adequate evidence of rehabilitation. Tr. at 115-123.

### III. Applicable Standards

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type of case, we apply a different standard, which is designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d).

This standard implies that there is a strong presumption against the granting or restoring of a security clearance. See Dep't of Navy v. Egan, 484 U.S. 518, 531 (1988) ("the clearly consistent with the interests of the national security test" for the granting of security clearances indicates "that security-clearance determinations should err, if they must, on the side of denials"); Dorfmont v. Brown, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. Personnel Security Hearing (Case No. VSO-0002), 24 DOE ¶ 82,752 at 85,511 (1995).

Once a security concern has been found to exist, the individual has the burden of going forward with evidence to rebut, refute, explain, extenuate or mitigate the allegations. Personnel Security Hearing (VSO-0005), 24 DOE ¶ 82,753 (1995), aff'd, 25 DOE ¶ 83,013 (1995). See also 10 C.F.R. § 710.7(c).

#### IV. Analysis

The issue in this case is whether the individual has mitigated the Criterion J security concern, by demonstrating that he is reformed and/or rehabilitated from his alcohol abuse. As discussed below, I find that the individual has resolved the concern.

I believe that, as he contends, the individual has abstained from alcohol since new year's eve 2004-2005. The AA companion testified convincingly in this regard, as did the individual's wife and son. These witnesses see him most frequently and are in a good position to give reliable testimony on this matter. Further, the witnesses who see him somewhat less frequently also corroborated the individual's testimony that he has been abstinent in the year 2005.

I am also convinced that the individual has attended AA daily since July 2005. In addition to his convincing testimony on this point and that of the AA companion, the individual submitted records showing his attendance at 150 AA meetings during the period July through November 2005. Individual's Hearing Exhibit A. The individual also documented his successful completion of the IOP in November 2005. Individual's Hearing Exhibit 3. Finally, based on the testimony at the hearing, the DOE consultant psychiatrist testified that the individual was rehabilitated from alcohol abuse. Given this very positive showing, I find that the individual has demonstrated rehabilitation from alcohol abuse.

I am also convinced that there is a good prognosis for this individual. He now has the tools, including a strong support system, to cope with future stress that heretofore might have caused him to turn to alcohol. Moreover, the individual has a strong motivation to stay sober: he is deeply committed to his wife and family. I believe that he fully understands the hardship that resuming alcohol use would impose on them. Finally, the individual indicated that maintaining good health is a particularly important reason for his continued abstinence. This was very convincing testimony. I believe that he is keenly aware that any alcohol use in the future could have serious adverse effects on his health, and that he is committed to a healthy lifestyle. I am persuaded that the individual's health concerns will motivate him to abstain from alcohol use.

#### V. CONCLUSION

As the foregoing indicates, the individual has resolved the Criterion J security concern cited in the Notification Letter. It

is therefore my decision that the individual should be granted access authorization.

The parties may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Virginia A. Lipton  
Hearing Officer  
Office of Hearings and Appeals

Date: January 24, 2006